

**BEFORE THE WESTERN WASHINGTON GROWTH  
MANAGEMENT HEARINGS BOARD**

MOORE-CLARK CO., INC., a Washington Corporation	)	
	)	
	)	No. 94-2-0021
Petitioner,	)	
	)	ORDER REGARDING
vs.	)	DISPOSITIVE MOTIONS
	)	
TOWN OF LACONNER,	)	
	)	
Respondent,	)	
	)	
FRIENDS OF LACONNER,	)	
	)	
Intervenors.	)	
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On January 12, 1995, Respondent, (Town), filed a dispositive motion on the following issues (as set forth by Respondent, not as stated in the Prehearing Order):

1. Does the Board have jurisdiction over this appeal which was not filed in a timely manner?
  
2. May the Appellants impose upon the Town of LaConner the use of a 2.9% annual population growth rate in the Town's Comprehensive Plan based on the Skagit County Comprehensive Planning policies (CPPs); where the proposed UGA for LaConner has drastically shrunk since the 2.9% number was derived; and whose population projects show a decline in population for the Town?
  
3. Does the Board have jurisdiction to determine whether the comprehensive plan adopted by the Town of LaConner is consistent with the Washington State Shorelines Management Act (Chapter 90.58 RCW) or the LaConner Shorelines Master Program Ordinance No. 493.?

4. Is the LaConner Comprehensive Plan either internally inconsistent or inconsistent either with the CPPs or GMA (Chapter 36.70A RCW)?

5. Did the Town fail to comply with the public participation requirements of RCW 36.70A.140?

We first address issue number 1. The Town argues that the Board has no jurisdiction over this appeal because the petition was untimely filed. The Town asserts that there is no provision within GMA that requires a city or town to adopt its comprehensive plan by ordinance as opposed to by resolution. In the Town's view, the act of adoption by resolution satisfies the notice requirement of the Act and starts the sixty day time-frame for petition filing.

The Town's memorandum references WAC 242-02-220(A) (*sic*). We believe that the reference is to WAC 242-02-220(4), which relates to "all other matters" but does not pertain to a comprehensive plan adoption. Section 220(1) relates to adoption of comprehensive plans. WAC 242-02-220(1) calls for petitions relating to *adopted* comprehensive plans to be filed "within sixty days from the date of publication...as specified by RCW 36.70A.290(2)." .290(2) requires that a petition "must be filed within sixty days after publication". References in RCW 36.70A.290(2) to an "ordinance" are generic. It is the act of adoption which must be published in order to start the sixty-day time-frame.

Whether the act of adoption is by resolution or by ordinance, the Act requires publication of that adoption in order to start the sixty day clock for filing a petition for review. Issue 1 of the Town's dispositive motion is, therefore, denied.

Petitioner requests that we determine that jurisdiction is proper in this case because Petitioner filed its petition prior to the expiration date of sixty days after publication. Accordingly, issue 1 of the Prehearing Order (does the Growth Management Board have jurisdiction over a comprehensive plan adopted by resolution and is the Town required to adopt its comprehensive plan by ordinance rather than by resolution?) and issue 3 (does the doctrine of Laches apply to

the petition for review filing? If so, was the filing of the petition for review in violation?) are resolved as follows:

We hold that the Town may adopt its comprehensive plan by ordinance or by resolution, but must publish in order to activate the sixty day filing time-frame. We also hold that the doctrine of Laches does not apply and that the petition was timely filed.

Issues 2, 4 & 5. We hold that these issues are not appropriate for determination on dispositive motion because of their complexity and because they require substantial review of the record. These motions are, therefore, denied.

Issue 3. We have jurisdiction to determine the consistency of a comprehensive plan as it relates to the Shorelines Management Act. We reserve our decision on whether or not consistency has been achieved. Therefore, the dispositive motion is denied.

DATED this 2nd day of February, 1995.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Les Eldridge  
Presiding Officer

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Nan A. Henriksen  
Board Member

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William H. Nielsen  
Board Member

